

OPTICAL DISC PIRACY IN ASIA PACIFIC

ISSUE

Optical disc piracy in Asia has reached epidemic proportions, causing substantial losses to U.S. copyright interests. It is imperative that governments in the region find the will and means to tackle this problem head on. The first priorities should be to shut down illegal manufacturing facilities and establish registration of plants.

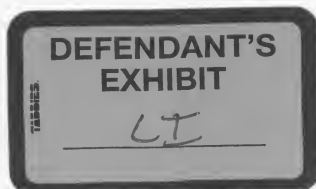
BACKGROUND

Optical disc piracy, including pirate video compact discs (VCD), is growing at an alarming rate in Asia and it is having a very direct and damaging impact on U.S. film producers. Within a matter of days after a film is released theatrically in the United States, pirates produce VCDs of the film and sell them in markets across Asia and beyond. Pirate digital versatile discs (DVD) are also available in increasingly large numbers, threatening the development of this all-important format. Pirates are also marketing their wares on the Internet.

China started out as the major source of pirate VCD manufacturing. Active enforcement by the China government in 1997 drove illicit production facilities to Hong Kong, Macau, Taiwan, and Malaysia. Now, suspect production facilities exist in virtually every Asian country. As enforcement is strengthened in one country, pirate production moves to a "safer" venue. As a result, trade in unauthorized stampers and pirate optical discs is thriving within Asia. This pirate product is also finding its way into Europe, the Middle East and Africa.

Optical disc piracy is particularly alluring because of the high profit margins. Pirates can produce a VCD for less than 15 U.S. cents and sell it for as much as US\$5.00. From the pirate's perspective, the potential rewards far outweigh the perceived risk of being caught. As a result, there is a tremendous over capacity in production in the region and the markets are being flooded with pirate VCDs. Pirates will likely become more aggressive in producing and peddling pirate DVDs as the installed base of DVD players expands.

Optical disc production capacity in the region is staggering. There are over 430 optical disc production facilities with an estimated total of around 1,175 manufacturing lines in the Asia Pacific region. A conservative average production capacity of a single manufacturing line is 3.5 million discs a year. This puts production capacity in the Asia Pacific region at an astounding level of



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at least 4.1 billion discs a year. Even more astounding, and disturbing, is that the production capacity continues to expand rapidly.

Recent seizures help illustrate the size of the problem. In 1999, 14.4 million pirate VCDs and 598,000 pirate DVDs were seized in MPA raids. The value of optical disc manufacturing equipment seized in just one raid totaled US\$60 million. The challenge of attacking optical disc piracy is far greater than it was with VHS piracy due to the involvement of international criminal organizations, which are well-funded, well-entrenched and resilient.

RECOMMENDATIONS

The conditions in each country are different but there are some universal steps which must be taken to attack optical disc piracy.

- 1) First and foremost, the leadership in each government needs to understand how serious this problem is and demonstrate the political resolve to deal with it,
- 2) Each country must tightly regulate and monitor the manufacture of optical discs. The regulations should include registration requirements, the right of inspection, mandatory use of identification codes on all optical discs, and stiff penalties for violations of registration requirements, including copyright violations. Seized machinery and equipment should be forfeited.
- 3) Each country should control the import of optical disc manufacturing equipment and the raw materials (polycarbonate) needed to produce these discs.
- 4) Customs should zealously watch for concealed shipments of pirate optical discs and stampers.
- 5) Courts should handle cases expeditiously and should be encouraged to impose deterrent sentencing on those who are convicted. Information on enforcement and prosecution should be readily available.
- 6) Legislation on organized crime should be used to fight optical disc piracy.

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HONG KONG - A CASE STUDY

VCD piracy in Hong Kong exploded in 1997. Pirate production was rampant and pirate VCDs threatened the continued existence of a legitimate video market. Fortunately, the Hong Kong SAR Government responded with a number of legislative and enforcement measures.

The Prevention of Copyright Piracy Ordinance was adopted in May 1998 and entered into effect in August 1998. This law requires optical discs plants to register and to operate under certain licensing conditions, including using SID codes on the discs, reporting all movement of machinery, and being subject to unannounced inspections. The law carries strong penalties, including forfeiture of manufacturing equipment and loss of operating license.

In 1998, Hong Kong also introduced import licensing requirements for optical disc production equipment. The objective is not to prevent the importation of machinery, rather it is to have a way of tracking the movement of optical disc production equipment.

Another major legislative step Hong Kong took was to add "copyright piracy" to Schedule 1 of the Organised and Serious Crimes Ordinance (OSCO). OSCO provides the tools to get to the "big fish" behind the piracy business and carries significant penalties.

Hong Kong also amended the Copyright Ordinance to make unauthorized possession of video recording equipment in cinemas a criminal offense.

Of course laws are not adequate unless they are enforced. In 1999, 9 unlicensed factories were raided and 14 production lines were seized. So far this year, 3 factories were raided and 5 lines were seized. Since January 1999, 18.3 million pirated optical discs were seized.

Hong Kong also established a retail piracy task force. Since the formation of this task force, the number of pirate video outlets has declined from over 1,000 to less than 200.

Courts understand the significance of copyright piracy and are now handing out stiffer penalties. MPA had one case in which the offender was imprisoned for 38 months. We have had other cases with imprisonment for two years plus fines.

Last but not least, Hong Kong is also undertaking a public awareness campaign. The government earmarked HK\$17 million (US\$2.18 million) to spend on public awareness and education on copyright piracy over the next three years.

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In short, Hong Kong has taken impressive steps to strengthen legislation and beef up enforcement. As a result, the hard hit film industry is beginning to show signs of recovery. The level of local film production reached its nadir and is now on the rise. There is hope people will get back into the habit of going to the cinema now that pirate VCDs of the very latest hits are not as readily available. Video outlets carrying legitimate product are less threatened now that the number of pirate outlets has declined.

However, even with all this progress, the battle is not over. Pirates will be quick to return with any hint of a let up on enforcement. Organized crime will continue to utilize their resources to seize upon any openings.

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